the seller's agreement to pass title. In *Atkinson* v. *Japink, supra,* while the seller and his assignee were awarded a right analogous to a statutory lien against the chattel, it was held that the contract reserving to the seller both the title and the right to sue for the price showed that the parties intended title should be reserved to the plaintiff only as a security for the price, *i. e.,* in the nature of a lien and that therefore there was not a conditional but an absolute sale. The Wisconsin court, on the contrary, holds the existence of these two remedies to be not inconsistent but cumulative and hence imposed no alternative to elect between them. In cases where passage of title is not the consideration for the price, this may be true. However, where it clearly appears that payment of the price is in consideration of the passage of title, it is submitted that the right to sue for the price to be paid for the title and the retention of the title are inconsistent.

SALES — CONSIDERATION FOR WARRANTY. — Plaintiff agreed to purchase a specified horse from defendant, and paid part of the stipulated purchase price. Thereafter, but before delivery of the horse and payment of the balance of the price, defendant warranted the horse. *Held,* the warranty was enforcible. *Bowen* v. *Zaccanti* (Mo., 1919), 208 S. W. 277.

The court makes the sole issue whether title had passed at the time of the agreement, holding that it had not. On the usual presumption, however, title had passed, as nothing except delivery and payment remained to be done. *Bill* v. *Fuller,* 146 Cal. 50; *Kessler* v. *Veio,* 142 Mich. 471. But what has passing of title to do with the binding quality of a warranty? The courts have held that a warranty made after the passing of title is enforcible only when there is a new consideration. *Baldwin* v. *Daniel,* 69 Ga. 782; *Congar* v. *Chamberlain,* 14 Wis. 258. The court in the principal case seems to have concluded from this proposition that a warranty made before title had passed is, *ipso facto,* binding regardless of consideration. The court bases its decision on *Douglas* v. *Moses,* 89 Ia. 40, and *McGaughey* v. *Richardson,* 148 Mass. 608. While *Douglas* v. *Moses* supports the decision, it is itself based upon the other case cited, which in no way is authority for its holding. In *McGaughey* v. *Richardson* the vendor of horses at auction had advertised that warranty would be given purchasers at the sale, and the vendee after having a horse knocked down to him had the vendor insert a warranty in the bill of sale. The warranty was one of the terms of the contract, and unless it had been made, the vendee might well have claimed a recission of the bargain.

STATUTORY CONSTRUCTION — UNINTENTIONAL OMISSION OF WORD "NOT" FROM STATUTE.—Statute prohibited the use of automobile lights unless designed to throw a ray "which shall rise above 42 inches" at a distance of 75 feet. Defendant's lights threw a ray which did not rise above 42 inches at this distance. Expert testimony clearly showed to the court that ligths in conformity with the requirements of the statute were "blinding," while those throwing a ray *not* above 42 inches at the stated distance were not; and that the latter alone was what the legislature could have intended. *Held,* that it is not within the power of the court to read the word "not" into the

statute, and that there had been a failure of legislation with reference to the statute. *State* v. *Claiborne* (Iowa, 1919), 170 N. W. 417.

In this case there were three possibilities of decision. The court might have held it without its powers to insert the word "not" into the statute, and yet held the statute valid; it might have deemed it within the province of the judiciary to construe into the statute the word "not", so as to effectuate the obvious intention of the legislature; or it might have proceeded as it did and declared the statute of no effect inasmuch as it was not the function of the court to legislate. To have allowed the statute to remain enforcible strictly according to its letter would have been unjust and caused an absurd condition. Such a course was out of the question. But could the court insert the omitted word into the statute, thereby making the statute read in direct opposition to the legislative draft? While it is true that when the intention of the lawmakers can be collected from the whole statute, from the title or preamble, or from related provisions, words may be supplied so as to obviate any inconsistency with such intention, LEWIS'S SUTHERLAND'S STATUATORY CONSTRUCTION, Sec. 410, however in the principal case there was none of these tangible hints at which the court could grasp in its construction. Here the language presented no ambiguity, and the court followed the established rule that it cannot qualify it by interpolation. *People* v. *Sands,* 102 Cal. 12; *Swarts* v. *Siegel,* 117 Fed. 13; *U. S.* v. *Diamonds,* 139 Fed. 961. In *Manhattan* v. *City of New York,* 147 N. Y. S. 835, the court said, "If the legislature fails to insert such provisions in the law as will accomplish the result intended, their omissions cannot be remedied by construction, and the law must, to that extent, be considered defective and inoperative, the court having no power to interpolate words or phrases." Also see *U. S.* v. *Ragsdale,* Hemst, 497. Where a statute as printed omitted the word "not", which appeared in the enrolled act, and afterwards the statute was amended and reenacted and the word "not" omitted from both the enrolled and printed acts, it was held to be a clerical error and the omitted word construed into the amended act. *Hutchings* v. *Com'l. Bank,* 91 Va. 68. Here the omission made the act unintelligible and incongruous, while in the principal case the meaning was perfectly plain and there was no inconsistency caused by passing the act as it was. It being quite evident in the case at bar that to enforce the act as it stood would have wrought a condition conflicting with reasonable requirements of conduct, and inasmuch as the court would have laid itself open to the frequent adverse criticism of judicial legislation by inserting the omitted word, the holding of the court was logical and expedient in declaring there had been a failure of legislation where the act would have wrought the very evils it sought to remedy.

WORKMEN'S COMPENSATION ACT — DEPENDENCY. — Under a Workmen's Compensation Act (Code § 3193k, Sec. 140, par. 8, 29 Laws of Delaware 763. p. 771) providing that if there be neither widow, widower nor children of deceased, compensation shall be paid "to the father and mother, or the survivor of them, if dependent to any extent upon the employee for support at the time of his death", *held,* that if the wages of a minor son deceased had